

JUDGE TORRES

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
MONTE ISOM,

Plaintiff,

-against-

COMPLEX MEDIA, INC,

Defendant.  
-----X

Civ. Action No.

COMPLAINT

RECEIVED  
FEB 13 2015  
U.S.D.C. S.D. N.Y.  
CASHIERS

Plaintiffs, by his attorneys, Joel L. Hecker, Esq. of Russo & Burke, as and for his complaint against defendant herein, alleges as follows:

### JURISDICTION

1. This action arises under Title 17 of the United States Code, and jurisdiction is vested in this Court under 28 U.S.C. Sec. 1338. Proper venue exists under 28 U.S.C. Sec. 1400(a) in that defendant resides, does business and/or may be found in this district and certain of the transactions complained of occurred in this district.

### THE PARTIES

2. Plaintiff was and at all relevant times herein has been a resident of the City, County and State of New York, and is a professional photographer.

3. Upon information and belief, defendant is a corporation with offices at 1271 Sixth Avenue, New York, NY 10020.

### COUNT I COPYRIGHT INFRINGEMENT

4. Plaintiff is and at all relevant times herein has been engaged in the business of creating professional photography.



5. Prior to commencement of this action, plaintiff caused a photograph of a Portuguese soccer fan at the World Cup, to be created under the name and title "Fans of the World Cup" with plaintiff retaining copyright and all other usage rights thereto (the "Copyrighted Photograph"). The Copyrighted Photograph was and is wholly original to plaintiff and is copyrightable subject matter under the copyright laws of the United States. A copy of the Copyrighted Photograph is attached hereto as Exhibit A.

6. Plaintiff by causing the creation of the Copyrighted Photograph, thereby secured the exclusive rights granted to the author of copyrightable work under the copyright laws of the United States.

7. Since the creation of the Copyrighted Photograph, publication of same by plaintiff or under his authority or license has been in strict conformity with the provisions of the copyright laws.

8. Since the creation of the Copyrighted Photograph, plaintiff has been the sole proprietor of all rights, title and interest in and the copyright of said Photograph.

9. Prior to the commencement of this action, plaintiff complied in all respects with the United States Copyright Act and all other laws governing copyrights by filing the Copyrighted Photograph with the United States Copyright Office, along with payment of the requisite fees, and obtained copyright registration under Certificate No. VAu 1-174-914 dated April 16, 2014.

10. Defendant, without the authorization, knowledge or consent of plaintiff, deliberately and wilfully used the Copyrighted Photograph on defendant's website *www.four-pins.com* in a disparaging manner after stripping the metadata and title from the Copyrighted Photograph which identified plaintiff as the photographer and copyright owner, and



renamed it with the disparaging name "*Douchfan.jpg*". A copy of the infringing photograph is attached hereto as Exhibit B (the "Infringing Photograph").

11. These uses of the Infringing Photograph, without plaintiff's permission, authorization or consent, were deliberate infringements of plaintiff's copyright in his work.

12. Such use by defendant of the Infringing Photograph in a negative and disparaging manner and renaming it as "*Douchfan.jpg*", has destroyed the commercial value of the Copyrighted Photograph and rendered it commercially unmarketable since it has now become associated with the disparaging remarks attributed to the fan in the Copyrighted Photograph.

13. Defendant thus violated plaintiff's exclusive rights in the copyright to the Copyrighted Photograph, in violation of Sections 106(2) and (5) of the Copyright Act of 1976, 17 U.S.C. Sections 106(2) and (5).

WHEREFORE, plaintiff demands judgment against defendant as follows:

(1) that defendant, its agents, servants, employees, officers, attorneys and all those persons in active concert or participation with each and any of them be enjoined during the pendency of this action and permanently, from directly or indirectly infringing the Copyright of plaintiff in any manner, and from publishing the Infringing Photograph.

(2) that defendant be required to deliver up to plaintiff to be impounded during the pendency of this action, all material infringing the Copyrighted Photograph which are in its possession or under its control and to deliver up for destruction any such material used in the making or publishing of such infringing matter;

(3) for an accounting of the proceeds derived by defendant from the publication of the infringing material and upon such accounting, that defendant pay to plaintiff damages provided by statute for defendant's statutory copyright infringement, and all monies determined



to be benefits generated or arising from such infringing material, and the damages which plaintiff has suffered as a result of such infringement.

(4) that defendant pay to plaintiff as and for exemplary damages the sum of \$25,000.

(5) that defendant pay to plaintiff all the costs and expenses of this action, including reasonable attorneys' fees to be assessed by the Court, plus interest as appropriate, and such other and further relief as to this Court deems just and proper.

Dated: New York, New York  
February 10, 2015

Russo & Burke

By: 

Joel L. Hecker  
*Attorneys for Plaintiff*  
600 Third Avenue  
New York, New York 10016  
(212) 557-9600

\\Mholden-pc\wpwin\Isom\Complex.Complaint.2.10.15.rtf.11966



**EXHIBIT A**

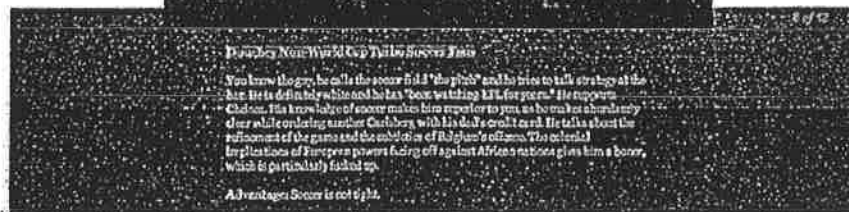






# EXHIBIT B





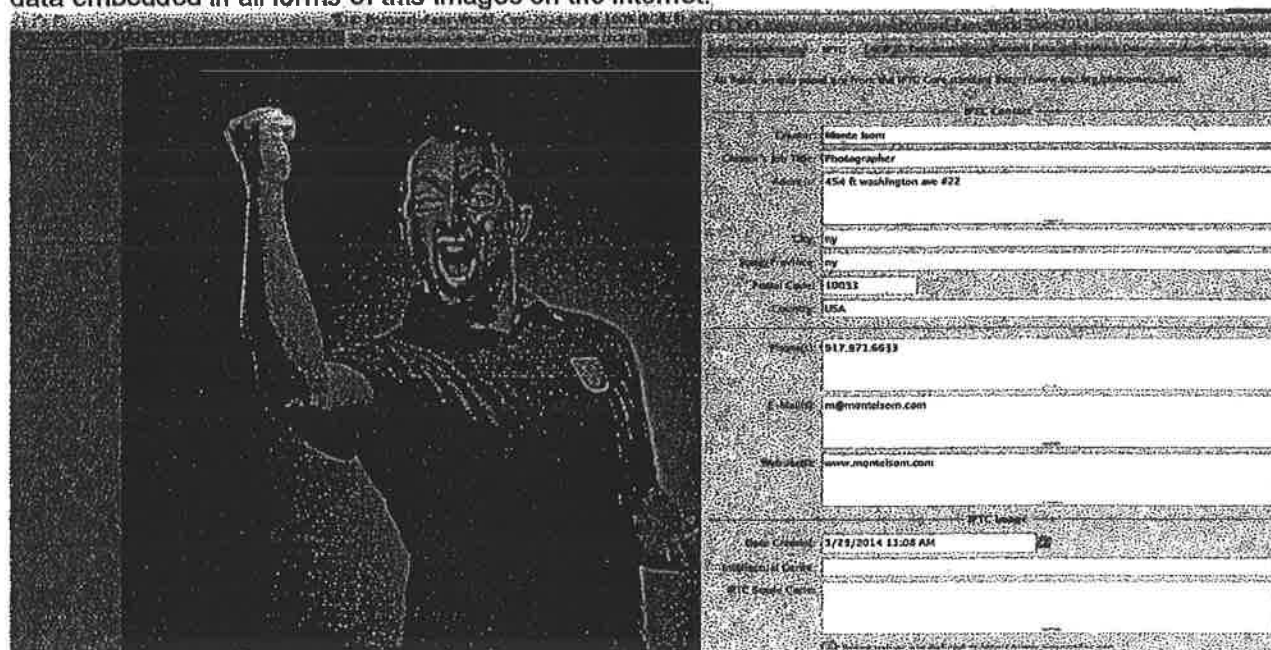
A high-contrast, black and white graphic illustration of a man in a dark shirt, raising his right fist in a celebratory gesture. The image has a grainy, stippled texture.

Four-pins.com source code identifying placement of image.

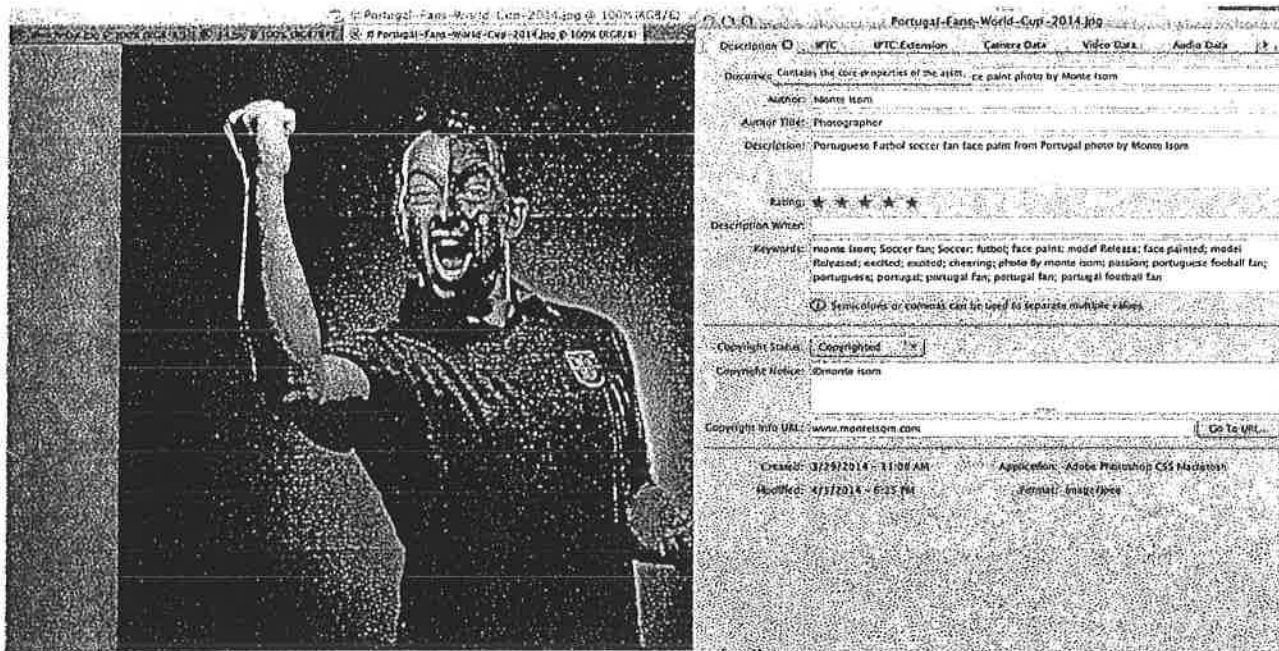


[illegible]

data embedded in all forms of this images on the internet.







Commercial takeover from Cole Haan that appears on page upon loading

